



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We make Indiana a cleaner, healthier place to live

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June 1, 1998

Carol Browner, Administrator
United States Environmental Protection Agency
Air and Radiation Docket and Information Center (6101)
401 M Street SW
Room M-1500
Washington, DC 20460

Attn: Docket A-97-43

Re: Comments on Advance Notice
of Proposed Rulemaking;
Section 126 Petitions

Dear Administrator Browner:

The State of Indiana is pleased to submit these comments on the USEPA's Advance Notice of Proposed Rulemaking, published on April 30, 1998, regarding petitions filed by eight states pursuant to Section 126 of the Clean Air Act Amendments of 1990. Indiana appreciates the opportunity to weigh in on this significant public policy issue at this early stage of the process, and to understand your agency's current thinking on the substantive issues raised by the petitions. As many of the issues raised in this ANPR are similar to those in the proposed nitrogen oxides (NOx) reduction rule, we incorporate our comments, dated March 9, 1998, on that proposed rule herein. We anticipate offering additional comments when USEPA issues its proposed rule on whether to grant or deny the Section 126 petitions.

In addition, Indiana will be filing comments on USEPA's Supplemental Notice of Proposed Rulemaking on or before June 25, 1998. We expect that the points we raise in those comments will be germane to the issues raised in this ANPR as well.

This letter contains Indiana's specific comments on USEPA's statements on the Section 126 petitions as of this time. We should emphasize, however, that Indiana's approach for addressing any contribution it has to downwind states is to address ozone pollution within Indiana itself. There are seven metropolitan areas in Indiana that have current air quality that exceeds the new eight hour ozone standard. We expect that some combination of regional NOx controls and local VOC controls will be necessary to improve air quality and improve the health of Indiana's citizens. IDEM is

working aggressively with a broad group of local officials, businesses, health and environmental organizations and citizens in those areas to explore and develop local clean air plans. Our view is that if Indiana addresses its own ozone problems, it will more than address any contribution it has to other states.

As set forth in more detail below, IDEM urges USEPA to deny the Section 126 petitions. The technical information already evaluated by USEPA, as well as additional work currently underway, does not support a finding of significant contribution under Section 126. Given the regional nature of ozone pollution, Section 126 is not an appropriate mechanism to provide suitable relief. USEPA should defer to its proposed NOx reduction requirements initiated under Section 110 of the Clean Air Act, which is a far more appropriate approach to addressing this situation.

Coordination with Nitrogen Oxides SIP call

IDEM agrees with USEPA that ozone is a widespread problem throughout the eastern half of the country and that transport of pollution occurs both between states and from attainment to nonattainment areas within the same state. Because it is such a widespread phenomenon, IDEM does not believe that Section 126 is the appropriate tool for USEPA to use to craft a solution. Section 126 focuses on quantifying and assigning responsibility for contributions downwind. It is a very useful tool when, for example, a facility on one side of a state border is clearly causing a problem in a neighboring state. It is less useful, however, in a situation such as this one, where the sources of pollution are numerous, diverse and widespread and the chemistry of ozone formation is so complex. IDEM believes that the proposed NOx SIP call is the more appropriate way for USEPA to address this issue and urges USEPA to deny the Section 126 petitions in deference to the SIP call process.

Indiana emphatically agrees with USEPA's intent to coordinate action on the Section 126 petitions with the NOx SIP call to the greatest extent possible, both in terms of the substance and timing of relief, if any. The issue to be addressed is the same: ozone levels in the eastern United States. The likely solution is the same: an appropriate combination of reductions in emissions of NOx and volatile organic compounds on an aggressive but achievable schedule. And the stakeholders are the same: the public, industry, and state and local government.

One area in which a coordinated approach appears to be difficult is the schedule for implementation of controls. Section 126 states that USEPA shall require sources found to be contributing to downwind transport to implement controls no later than three years after the finding is made. According to the schedule laid out in the notice, USEPA will make a final ruling on the Section 126 petitions by April 30, 1999. Compliance would be required no later than April 30, 2002. Not only is this inconsistent with USEPA's request for comment on a proposed 2004 implementation date under the NOx SIP call, it is clearly impractical, due to the large number of sources across the country that would be required to install NOx controls. Indiana urges USEPA to set a reasonable deadline or deadlines.

Preliminary Analysis of Significant Contribution

USEPA indicates that its preliminary assessment of whether states identified in the Section 126 petitions are contributing to ozone nonattainment in the petitioning states is based on information contained in the proposed NOx SIP call. As noted above, IDEM incorporates its March 9 comments on that notice herein.

IDEM agrees with USEPA's description of how ozone episodes develop and also that transport of ozone and ozone precursors is a real phenomenon. Indiana and the other Lake Michigan states identified the ozone transported in to the Chicago-Milwaukee-Northwest Indiana severe nonattainment area as a major impediment to the development of our ozone attainment plan several years ago. IDEM does not believe that the modeling and other technical work done to date supports USEPA's conclusion that significant pollution can be transported as far as 500 miles. IDEM believes that a range of 100-200 is more reasonable and supported by modeling results.

USEPA has used the analysis from the proposed NOx SIP call, in which it evaluated the impact on downwind states from 12 subregions, each of which consists of all or portions of multiple states. IDEM does not agree that USEPA can base a finding of contribution from an individual state or individual sources within a state on analysis of modeling that looks at impacts from a multi-state region. (This is consistent with IDEM's earlier comment that Section 126 is not the appropriate tool for USEPA to use in this situation.) Each of the subregions is several hundred miles wide. Whether a source is on the eastern or western side of the subregion could therefore make a significant difference in its contribution.

Indiana is divided into four of the subregions (1, 2, 5 and 6). Even according to USEPA's analysis, those regions were not found to contribute *at all* to one-hour nonattainment in Massachusetts, Rhode Island, Maine, New Hampshire and Vermont (which does not have any one hour nonattainment areas)-five of the eight petitioning states. Limited contribution to New York and Connecticut was found from the two subregions that contain eastern Indiana, and very minimal contribution to Pennsylvania from three of the subregions that contain Indiana.

For example, contributions from the regions that contain eastern Indiana contributed on the order of 2-5 parts per billion in Connecticut except on a very few occasions when the range of contribution was 5-10 parts per billion. In Pennsylvania, subregions including portions of Indiana contributed 2-5 parts per billion in fewer than 10 of the thousands of grid squares that comprise the modeling domain and from 5-10 parts per billion in 4 grid squares.

This level of impact is clearly not significant enough to warrant relief under Section 126, particularly in light of the fact that the decision of whether or not to grant relief under this provision of the Act must be made in the context of consideration of all possible ways for the ozone standards to be met in the petitioning states.

Preliminary Assessment of Emission Limitations and Compliance Schedule

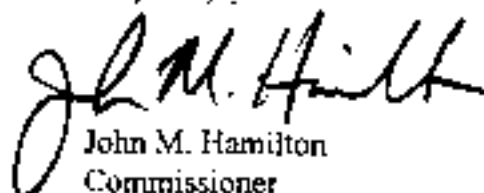
IDEM agrees with USEPA's deference to the NOx SIP call process for purposes of possible emission limitations, at least at this time. We are concerned with the statement that "EPA expects to base any remedy granted under section 126 on the assumption of a uniform control level for the covered universe of sources." 63 FR 24071. This is contrary to the later statement that "EPA plans to evaluate alternative approaches, other than one based on the application of uniform controls, in developing the rulemaking proposal." 63 FR 24074.

IDEM strongly endorses the latter statement. Solutions as costly as those likely to be required here must be based on the best scientific data and tailored to achieve the environmental goal. IDEM will provide additional comment on the issue of a proposed remedy on the Supplemental NPR. We reiterate that a compliance date of April 2002 will be practically unachievable.

IDEM supports the use of the most cost-effective control measures and a NOx trading program and one very effective way for sources to achieve the necessary reductions efficiently. IDEM will provide specific comments on USEPA's model trading rule in response to the Supplemental Notice of Proposed Rulemaking.

Indiana appreciates the opportunity to comment on this advance notice and looks forward to your consideration of them.

Very truly yours,



John M. Hamilton
Commissioner

cc: Dave Kee, EPA Region V